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9 Attorney for Nonparty Witnesses
10 Marine Taxonomic Services, Ltd,
11 Below the Blue, Seth Jones, and
12 Monique Rydel-Fortner (“BTB-MTS”)

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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3 CALIFORNIA SPORTFISHING
4 PROTECTION ALLIANCE,

5 Plaintiff,
6 v.

7 PACIFIC BELL TELEPHONE COMPANY

8 Defendant

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10 PACIFIC BELL TELEPHONE COMPANY,

11 Movant,
12 v.

13 MARINE TAXONOMIC SERVICES, LTD.

14 Respondent

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Case 2:21-cv-00073-JDP

Case No. 2:24-cv-00022-KJM-JDP

**DECLARATION OF JOSHUA
KOLTUN IN SUPPORT OF
BTB-MTS'S MOTION TO SHIFT
COSTS**

Zoom Hearing: December 12, 2024
Time: 10 am
Courtroom 9
Judge: Hon. Jeremy D. Peterson

1 I, Joshua Koltun, declare as follows:

2 1. I am counsel of record for nonparty witnesses Marine Taxonomic Services, Ltd
3 (“MTS”), Below the Blue (“BTB”), Seth Jones, and Monique Rydel-Fortner (collectively, “BTB-
4 MTS”) in this action.

5 2. I am a solo practitioner. I graduated Yale Law School in 1993, and began practicing
6 law after one year clerking for Judge Robert Keeton of the District of Massachusetts. Prior to starting
7 my own practice in 2007, I was a partner at the San Francisco firm Steinhart & Falconer, and then,
8 through mergers, at the firm that ultimately became DLA Piper. In 2007, my last year at DLA Piper,
9 my standard hourly rate was \$530 an hour. Had I continued to work at DLA Piper or another large
10 firm, my billing rate would likely now be considerably higher than that. For example, James
11 Chadwick, my former partner in the media practice at DLA Piper (and of equivalent seniority), was,
12 as of 2019, charging \$775 an hour, and his senior associate with 11 years of experience in the media
13 and entertainment practice was charging \$685 an hour, both of which rates were upheld as reasonable
14 in *Abbas v. Vertical Entm't, LLC*, No. 2:18-cv-7399-CBM-AFM, 2019 U.S. Dist. LEXIS 181056, at
15 *3-5 (C.D. Cal. Oct. 18, 2019).

16 3. I have extensive experience as a litigator, and in particular representing media
17 companies and individuals in matters involving the First Amendment. My experience representing
18 individuals who --like BTB-MTS -- published their own materials on the internet dates back to the
19 very outset of the phenomenon. *See Nicosia v. De Rooy*, 72 F.Supp.2d 1093 (N.D. Cal. 1999)
20 (representing a blogger before the term “blogger” had even been coined).

21 4. My current billable hourly rate is \$550 an hour. That is the rate at which I have been
22 charging my commercial clients, and that is the rate at which I have been billing Dow Jones for my
23 work representing BTB-MTS. Dow Jones has been paying my bills on an ongoing basis and has at no
24 point requested a reduction for any of my work. I operate as a solo practitioner, without associates,
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1 which enables me to provide efficient services at reasonable cost, compared to larger firms in which
2 partners of his seniority delegate work to less experienced associates. My hourly rate reflects the fact
3 that I perform all legal work on a matter.

4 5. In late November 2023, once it became evident that the Vance Center would be unable
5 to fulfill its commitment to locate *pro bono* legal representation for BTB-MTS, outside counsel for the
6 *Journal* contacted me and indicated that Dow Jones would pay his fees if he would step in and
7 represent BTB-MTS. I first spoke to Jones on November 22, 2023, and shortly thereafter BTB-MTS
8 signed a written engagement agreement with me.
9

10 6. I conferred with AT&T counsel and told them that that BTB-MTS would make a joint
11 production of documents to the identical subpoenas. I proposed that AT&T stipulate to transfer the
12 motion to compel regarding the MTS subpoena, which was in the Southern District, so that the two
13 identical subpoenas could be considered by this Court. AT&T refused. I then moved the court in the
14 Southern District to transfer the MTS subpoena. It did so, so that this Court could “make a “unified
15 set of rulings on issues presented by . . . identical subpoenas” served on MTS, BTB, and Jones. I
16 attach as ***Exhibit A*** the order entered by the Court in that case.
17

18 7. BTB-MTS made an initial production of documents in response to AT&T’s subpoena,
19 objected to producing documents concerning the investigation and reporting it had conducted with the
20 *Journal*, and began meeting and conferring with AT&T concerning the review and production of ESI.
21

22 8. In January 2024, MTS signed a written engagement with Alvarez & Marsel (“A&M”),
23 an ESI vendor that had been recommended by AT&T. By the time this Court issued a deadline for
24 compliance with the subpoena, Jones and Rydel-Fortner and I had already begun, and continued, to
25 work nonstop with A&M to search for responsive documents. A&M imaged and downloaded the
26 computers, various devices and accounts that AT&T had demanded. Over the course of the
27 production, AT&T expanded its demands as to the persons whose devices and accounts to be
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1 searched, and BTB-MTS acceded to these demands, which further increased the time needed to be
2 spent on searching and reviewing documents. I consulted with AT&T on possible word-searches but
3 (working with Jones, Rydel-Fortner and A&M) made the ultimate determinations of responsiveness.

4 9. BTB-MTS reviewed tens of thousands of documents for responsiveness. *Id.* After
5 filtering and de-duplication, A&M processed over 1.3 million documents that were searched and
6 reviewed for production. BTB-MTS produced 18,182 Documents to AT&T. The vast majority of
7 these costs concerned BTB-MTS reporting with the *Journal* and EDF.
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9 10. In communications with AT&T counsel, I asked on behalf of MTS that AT&T to
10 reimburse it for the significant expenses that it incurred in complying with the subpoena, to wit:
11 \$227,512 for fees charged by A&M, \$68,860 in attorney fees, and \$85,269 in hours spent by Jones
12 and Rydel-Fortner (at their ordinary billable rates), for time spent reviewing documents in complying
13 with the subpoena. I attach as ***Exhibits B, C, D & E*** the relevant invoices A&M has sent to MTS. I
14 attach as ***Exhibit F*** an accounting of my hours spent on complying with the subpoena after MTS
15 engaged A&M, which time was downloaded from my timekeeping system. Relevant timesheets for
16 the work performed by Mr. Jones and Ms. Rydel-Fortner is attached to the Jones Declaration. No
17 expenses incurred prior to January 2024 are being sought. Dow Jones advanced payment for 20% of
18 the A&M fees, in the understanding that it would be reimbursed upon an award of fees.
19

20 11. The fees sought that I asked A&M to pay, which A&M refused to pay, were for work
21 that I did in supervising and actively participating in the search for and review of potentially
22 responsive documents, in dealing with endless correspondence with AT&T counsel concerning same,
23 and in various checking and validating of the production. I believe the number of hours charged,
24 125.2, is eminently reasonable given the enormous scope of the review.
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26 12. In order to properly supervise the review, I had to expend considerable time discussing
27 documents with Jones and Rydel-Fortner to understand what documents were responsive and which
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1 were not. Notably, in meet and confer discussions after the Court's January 25 order, AT&T's
2 counsel (Messrs. Dhillon and Kelley) urged BTB-MTS to conduct word searches and then, rather than
3 review the documents for responsiveness, simply send them to **AT&T's** counsel to review. I thought
4 that the suggestion was highly irregular and inconsistent with the Court's denial of AT&T's proposed
5 order. It would also have been hugely more expensive to AT&T, for AT&T's counsel would have
6 been sent a huge volume of documents, the majority of which were unresponsive, and then would
7 have had to review them without the benefit that I had of BTB-MTS knowledge of their own
8 documents.
9

10 13. In 2023 AT&T posted annual net income of \$15.6 billion, as shown in its annual
11 report, available at this hyperlink: [Annual Report 2023 | AT&T](#), relevant pages of which I attach as
12 ***Exhibit G***

13 14. BTB-MTS has also incurred \$22165 in attorney fees (40.3 hours) in seeking relief from
14 this Court for AT&T's refusal to pay the foregoing significant expenses. I attach hereto as ***Exhibit H***
15 an accounting of such fees to date, downloaded from my timekeeping system, and BTB-MTS reserves
16 the right to seek such further attorney fees as may be incurred in the future.
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18 15. If BTB-MTS obtains a cost-shifting award, it will reimburse Dow Jones for the money
19 it had advanced to cover such costs. What I propose is that, in the event of an award to MTS, AT&T
20 wire the funds awarded to my trust account. I would then reimburse Dow Jones for any portion of the
21 award that it had already paid either to me, or to A&M. With Dow Jones approval, I would retain any
22 unpaid portions of my own bills. I would remit the remainder to A&M such money as was awarded
23 based on its invoices, and remit such portion to MTS as was awarded.
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25 16. I attach as ***Exhibit I*** a status report filed by AT&T in the proceeding in the Southern
26 District concerning the MTS subpoena.
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1 I declare under penalty of perjury under the laws of the United States that the foregoing is true and
2 correct.

3 Executed in San Francisco on November 6, 2024.

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Joshua Koltun ATTORNEY